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JONATHAN SAPAN

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JONATHAN SAPAN,

Plaintiff,

vs.

SOLARMAX TECHNOLOGIES, INC., a  
California Corporation; and DAVID HSU,  
an individual,

Defendants.

Case No.: '15CV648 W RBB

**COMPLAINT FOR DAMAGES,  
INCLUDING PUNITIVE  
DAMAGES, INTEREST AND  
ATTORNEY'S FEES, AND  
FOR INJUNCTIVE RELIEF**

**Violation(s) of Telephone  
Consumer  
Protection Act of 1991  
Trespass to Chattel  
Unfair Business Practices**

COMES NOW Plaintiff JONATHAN SAPAN (hereinafter referred to as  
"Plaintiff") who alleges as follows:

**JURISDICTIONAL ALLEGATIONS**

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1. Plaintiff is, and at all times herein mentioned was, a resident of the County of San Diego, State of California

2. SolarMax Technologies, Inc. is, and at all times herein was, a California corporation, doing business in the County of San Diego, State of California.

3. Defendant David Hsu is, and at all times herein mentioned was, an individual doing business in the County of San Diego, State of California.

4. This case is filed pursuant to the Telephone Consumer Protection Act of 1991, 47 U.S.C. §227 et. seq. The U.S. Supreme Court recently decided that federal courts have federal question subject matter jurisdiction over such civil actions under 28 U.S.C. §§ 1331 and 1441. *Mims v. Arrow Fin. Services, LLC*, -- U.S. --, 132 S.Ct. 740, 753 (2012). The state law claim herein arises out of a common nucleus of operative facts and is subject to supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

5. At all times herein mentioned each defendant was the partner, agent and employee of each co-defendant herein and was at all times acting within the scope of such partnership, agency and employment and each defendant ratified the conduct of each co-defendant herein.

## **FACTUAL SUMMARY**

6. JONATHAN SAPAN received ten (10) live calls to his home phone number (858-324-9001) from Defendants wherein the tried to pitch solar energy services to him. The dates, times, and Caller ID numbers (CIDs) are listed below:

- August 5, 2014 at 11:45am, CID 951-300-0751
- August 6, 2014 at 1:32pm, CID 951-300-0751
- August 11, 2014 at 9:32am, CID 951-300-0788
- August 12, 2014 at 2:32pm, CID 951-300-0788
- August 13, 2014 at 4:45pm, CID 951-300-0788
- August 13, 2014 at 6:24pm, CID 951-300-0788
- August 14, 2014 at 1:24pm, CID 951-300-0788
- August 14, 2014 at 4:29pm, CID 951-300-0788
- August 15, 2014 at 2:04pm, CID 951-300-0788
- August 15, 2014 at 5:05pm, CID 951-300-0788

7. Mr. Sapan's home phone has been listed on the federal "Do Not Call" registry maintained by the Federal Trade Commission from August 17, 2013 to the present.

8. During the first call on August 5, 2014 at 11:45 am, Defendants called Mr. Sapan's home phone number using CID number 951-300-0751, leaving Mr. Sapan a voice message.

9. The caller, addressing herself as "Rose" falsely stated that she was "calling in regards to [Mr. Sapan's] interest" in SolarMax's services.

10. Mr. Sapan never expressed any interest in any solar services nor gave the express written permission necessary to make solicitation calls to him.

1           11. In the voicemail, “Rose” further informed Mr. Sapan that she would  
2 be in the office till 4pm, and gave her callback phone number as 951-300-0751.

3           12. Mr. Sapan never called back, because he had no interest in hearing  
4 more about Solarmax, and their services.

5           13. On August 6, 2014 at 1:32 pm, Defendants called Mr. Sapan’s number  
6 again using CID number (951-300-0751).  
7

8           14. Mr. Sapan did not answer this call.  
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10           15. Mr. Sapan alleges on information and belief this call using the same  
11 CID number was made by Defendants to attempt to sell their solar services.  
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13           16. Starting August 11, 2014 at 9:32 am, and ending August 15, 2014 at  
14 5:05 pm, Mr. Sapan’s home line was called by defendants an additional eight (8)  
15 times from a second CID number, 951-300-0788.  
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17           17. All eight (8) calls were missed by Mr. Sapan.  
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19           18. On August 15, 2014, Mr. Sapan wrote a letter to SolarMax  
20 Technology, Inc.  
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22           19. The intent of Mr. Sapan’s letter was to come to an amicable  
23 agreement with SolarMax Technology, Inc., regarding illegal calls made to his  
24 telephone number.  
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26           20. On September 5, 2014 Craig Swart, an employee of Solarmax  
27 Technology, Inc, sent a response letter to Mr. Sapan.  
28

1           21.    At the end of Mr. Swart's letter his contact information lists his  
2 telephone number as 951-300-0788.

3           22.    This phone number 951-300-0788, matches the eight (8) missed calls  
4 sent by Defendants to Mr. Sapan's phone number previously mentioned herein.

5           23.    Mr. Sapan alleges on information and belief all calls using CID  
6 number, 951-300-0788 was made by Defendants to attempt to sell their solar  
7 services.  
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9           24.    Only one (1) out of ten (10) of the live calls complained of identify  
10 who was calling to offer these solar energy services as required by both federal and  
11 California law.  
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13           25.    Mr. Sapan performed a Google Search on both the telephone number,  
14 951-300-0751 and Solarmax.  
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16           26.    The Google Search showed the number previously mentioned, on the  
17 Better Business Bureau webpage, listed as the phone number for Solar Max  
18 Technology, Inc.  
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20           27.    The Bloomberg Business Page lists Defendant David Hsu as Chief  
21 Executive Officer of Solar Max Technology, Inc.  
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23           28.    Plaintiff alleges on information and belief that Defendant David Hsu  
24 made the violative calls, ordered them made, knew the calls described above were  
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1 being made and did nothing, or was willfully and recklessly ignorant of the fact his  
2 company was making the calls described above.

3  
4 **FIRST CAUSE OF ACTION**

5 [Violation of Telephone Consumer Protection Act of 1991 –  
6 For Ten (10) calls “Do-Not-Call” Violations]

7 29. Plaintiff realleges all paragraphs above and incorporates them herein  
8 by reference.

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10 30. Plaintiff is bringing this action pursuant to the provisions of the  
11 Telephone Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R.  
12 §64.1200 – “TCPA”).

13  
14 31. Subdivision (c) (2) of Section 64.1200 of Title 47 of the Code of  
15 Federal Regulations makes it unlawful for any person to “initiate any telephone  
16 solicitation” to “A residential telephone subscriber who has registered his or her  
17 telephone number on the national do-not-call registry of persons who do not wish  
18 to receive telephone solicitations”.

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21 32. At all times relevant to this complaint, Plaintiff had registered his  
22 residential telephone number on the national do-not-call registry maintained by the  
23 U.S. Government.

24  
25 33. Defendants have called Plaintiff’s residential telephone line for  
26 solicitation purposes during the statutory period of the last 4 years, pursuant to 28  
27 U.S.C. § 1658. These calls are the only calls known to Plaintiff at this time and  
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1 Plaintiff states on information and belief, without yet having the aid of full  
2 discovery, that it is quite likely that Defendant has made many more violative calls  
3 to Plaintiff's residential telephone line. These calls were not made in error, nor did  
4 Defendant have express permission from Plaintiff to call, nor did Defendant have a  
5 personal relationship with Plaintiff. 37 C.F.R. § 64.1200 (c) (i), (ii), & (iii).  
6

7  
8 34. Subdivision (c)(5) of section 227 of title 47 of the United States Code  
9 permits a private right of action in state court for violations the national do-not-call  
10 registry rules promulgated thereunder. Plaintiff may obtain relief in the form of  
11 injunctive relief, or Plaintiff may recover \$500.00 for each violation, or both. If  
12 the court finds that defendants' violations were willful or knowing, it may, in its  
13 discretion, award up to three times that amount.  
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17 **SECOND CAUSE OF ACTION**

18 [Trespass to Chattel – For all ten (10) calls]

19 35. Plaintiff realleges all paragraphs above and incorporates them herein  
20 by reference.  
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22 36. The conduct by defendants complained of herein, namely illegally  
23 calling Plaintiff's phone, constitutes an electronic trespass to chattel.  
24

25 37. At no time did Plaintiff consent to this trespass.

26 38. As a proximate result of these intrusions, Plaintiff suffered damage in  
27 an amount according to proof, but no less than 20% of his monthly phone bills in  
28

1 August of 2014 since Defendants calls constituted 20% or more of the total calls to  
2 his phone at the height of their junk calling campaign.

3 39. In making the illegal calls described above, defendants were guilty of  
4 oppression and malice, in that defendants made said calls with the intent to vex,  
5 injure, or annoy Plaintiff or with a willful and conscious disregard of Plaintiff's  
6 rights. Plaintiff therefore seeks an award of punitive damages.  
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9 **THIRD CAUSE OF ACTION**

10 [Engaging in Unfair Business Practices – All ten (10) calls ]

11 40. Plaintiff re alleges all paragraphs above and incorporates them herein  
12 by reference.  
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14 41. Because these telephone calls violate federal statutes, they are  
15 unlawful business practices within the meaning of section 17200 of the Business  
16 and Professions Code.  
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18 42. As a proximate result of these intrusions, Plaintiff suffered damage in  
19 an amount according to proof, but no less than 20% of his monthly phone bills in  
20 August of 2014 since Defendants calls constituted 20% or more of the total calls to  
21 his phone in the two months at the height of their junk calling campaign.  
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23 43. Section 17203 of the Business and Professions Code entitles Plaintiff  
24 to an injunction enjoining defendants from engaging in unfair or unlawful business  
25 practices.  
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1 WHEREFORE Plaintiff prays for judgment against defendants, and each of  
2 them, as follows:

3 On the FIRST CAUSE OF ACTION:

4 44.For an award of \$500.00 for each violation of 47 U.S.C. §227;

5 45.For an award of \$1,500.00 for each such violation found to have been  
6 willful;

7 On the SECOND CAUSE OF ACTION:

8 46.For compensatory damages according to proof;

9 47.For punitive damages;

10 On the THIRD CAUSE OF ACTION:

11 48.For preliminary and permanent injunctions, enjoining Defendants, and  
12 each of them, from engaging in unfair or unlawful business practices  
13 pursuant to section 17203 of the Business and Professions Code;

14 On ALL CAUSES OF ACTION:

15 49.For attorney's fees pursuant to California Code of Civil Procedure §  
16 1021.5.

17 50.For costs of suit herein incurred; and

18 51.For such further relief as the Court deems proper.  
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21 DATED: March 10, 2015

**PRATO & REICHMAN, APC**

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23  
24 /s/Christopher J. Reichman, Esq.

25 By: Christopher J. Reichman, Esq.

**Prato & Reichman, APC**

26 Attorneys for Plaintiff

27 JONATHAN SAPAN  
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